IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 684 of 2001
(Old No. 946 of 1987)

1. M/s Murlidhar Rajaram
   Commission Agent
   Bazpur Ganj
   Kashipur, District Nainital
2. Sri Vijai Kumar Agarwal
   S/o Sri Murlidhar
3. Sri Sudarshan Kumar Agarwal
   S/o Sri Rajaram
4. Sri Ajai Kumar Agarwal
   S/o Sri Rajaram
   All Partners of M/s Murlidhar Rajaram
   Commission Agent, Bazar Ganj
   Kashipur, District Nainital ..Defendants/ Appellants

Vs

1. Banaras State Bank Limited
   Kashipur, District Nainital
2. Bank of Baroda
   Branch Kashipur
   District Udham Singh Nagar ...Plaintiffs/ Respondents

Sarvesh Aggarwal, learned counsel for the appellants
Sri A.K. Joshi, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been preferred under Order 43 Rule 1 of C.P.C. against the judgment and award dated 20.10.1987 passed by Civil Judge, Nainital in restoration application No. 15 of 1987 arising out of Original Suit No. 133 of 1986 between Banaras State Bank Ltd, Kashipur Vs M/s Murlidhar Rajaram & others.

2. Brief facts of the case are that the Bank instituted a suit for recovery of an amount of Rs. 1,20,823.17. After the institution of the suit the notices were issued to the defendants/appellants by the court concerned. The report of

the process server which was available on the record reveals that none of the partner of the firm accepted the notices rather they read the notice and refused to sign the same. The trial court accordingly took the view that there was sufficient service on the defendants. The trial court thereafter proceeded ex-parte and accordingly decreed the suit ex-parte vide judgment and decree dated 01.04.1987.

3. The defendants/appellants thereafter moved an application for setting aside the ex-parte judgment and decree dated 01.04.1987 on the ground that few of the partners of the firm were not served.

4. The court below after having perused the entire material available on record and hearing learned counsel for the parties was pleased to observe that there was no sufficient ground to set aside the ex-parte decree. The court below accordingly dismissed the application for setting aside the application for ex-parte decree vide judgment and order dated 01.04.1987.

5. Feeling aggrieved by the aforesaid impugned order, the appeal under Order 43 Rule 1 of C.P.C. has been preferred by the appellants before the Allahabad High Court which has been transferred to this Court for disposal after creation of separate State.

6. The record reveals that one Sri Anant Ram Agarwal partner in the firm – M/s Murlidhar Rajaram was served personally. Therefore, it is quite clear that one of the partners of the firm was sufficiently served. The record further reveals that the other partners of the firm read the notices, but they

refused to sign over the same. The process server has made the compliance endorsement in this regard.

7. In view of the aforesaid circumstances, it is quite clear that the defendants/appellants had been sufficiently served but in spite of the service of notices, they did not participate in the proceeding before the trial court. The trial court has rightly decreed the suit ex-parte and thereafter in view of the facts and circumstances of the case, the application has again rightly been rejected for setting aside the ex-parte order.

8. I do not find any infirmity in the impugned order passed by the court below. I do not find any ground to interfere in the appeal at this stage.

9. The appeal lacks merit and is liable to be dismissed.

10. Accordingly, the appeal is dismissed.

11. The stay order, if any, stands vacated. The impugned judgment and order dated 20.10.1987 passed by the Civil Judge, Nainital is hereby confirmed.

(B.C. Kandpal, J.)

27.10.2006
ASWAL